HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No. 441 of 2000

Prabhuram

Vs.

The State of M.P. (Now Chhattisgarh)

JUDGMENT

Post for 25.06.2007

Sd/-
Sunil Kumar Sinha
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL No. 441 of 2000

APPELLANT	Prabhuram S/o Jhariyar Gond, Aged about 20 years, R/o Nayapara Jhuriya, P.S. Jhuriya, District Rajnandgaon
	Versus
RESPONDENT	State of Madhya Pradesh (Now Chhattisgarh) through P.S. Jhuriya, District Rajnandgaon (C.G.)

Appearance:

Smt. Usha Chandrakar, counsel for the appellant.

Smt. Madhu Nisha Singh, Panel Lawyer, for the State.

JUDGMENT
(25.06.2007)

SUNIL KUMAR SINHA, J.

(1) This appeal is directed against the judgment of conviction and order of sentence dated 12.1.2000 passed in Sessions Trial No.160/1999 by the Sessions Judge, Rajnandgaon (C.G), whereby the appellant was convicted under Sections 376, 324 & 506 (part-II) of I.P.C. and sentenced to undergo R.I. for 10 years, 6 months & 6 months respectively with a further direction to run the sentences concurrently.

(2) The case of the prosecution is that on 31.8.1999 at about 16.30 hours, the prosecutrix namely Ku. Hanifa Begum (P.W.1), a girl aged about 18 years had gone to a Tank for washing clothes alongwith her mother. When she went to answer call of nature towards a lonely place, leaving her mother at the tank, the appellant came there, caught hold of her, threatened and

threw her on the ground and thereafter committed rape against her. It is alleged that while committing sexual intercourse he had given teeth bite on the lips and face of the prosecutrix. When the prosecutrix was released, she came back to her mother, narrated the story and a First Information Report (Ex.P.1) was lodged at about 18.15 hours on the same day. During the course of investigation, the prosecutrix was sent for medical examination on 1.9.1999 and was examined by Dr.(Smt.)Shail Khare (P.W.12), who prepared her report Ex.P-17. She found that the girl was of an average build, conscious and normal, axillary hairs were scanty developed, breasts were well developed and there were no mark of external injuries over the body except a swelling and reddishness in the middle of upper lip and tenderness over the back of chest. On the local examination, she found that pubic hairs were well developed but not melted. However, in the internal examination, hymen was found to be ruptured at 9 and 3 O' clock position and there were fresh bleedings and she was complaining pain in the vagina. According to her opinion, she was subjected to forcible intercourse. The appellant was also examined by Dr.S.K. Ahuja (P.W.11), who gave report Ex.P.15 which shows that he was competent to perform sexual intercourse. Various articles along with the clothes of the prosecutrix as well as the appellant were also seized, which were said to be containing semen and blood like stains. In the chemical examination, the underwear, Salvar and Kurta of the prosecutrix along-with her pubic hairs as well

as the underwear of the appellant were found to be stained with blood. The underwear of the prosecutrix, her pubic hair and two slides prepared from the vaginal material of the prosecutrix and the underwear of the appellant were also found containing semen and human spermatozoa. The report received from the Forensic Science Laboratory is Ex.P.19. On further investigation, statements of various witnesses were recorded and charge sheet was filed under the aforementioned sections of I.P.C., to which the appellant denied.

(3) Learned counsel for the appellant argued that the prosecutrix and her parents are unreliable witnesses, therefore, the conviction based upon their testimonies should be set aside. Alternatively she also argued that the appellant is continuously in jail since 03.9.1999 and thereby he has already undergone for a period of more than 7 years, 9 months, therefore, in case of appeal being dismissed on merits, his sentence be reduced accordingly, preferably to the period already undergone by him.

(4) On the other hand, learned State Counsel opposed these arguments and supported the judgment of conviction and order of sentence passed by the Sessions Court.

(5) So far as merits of case are concerned, the prosecutrix (P.W.1) deposed that on 31.8.1999 at about 4.30 p.m., she had gone to the tank alongwith her mother to wash the clothes. After a while, when she went to a particular place to answer the call of nature, leaving her mother, the appellant came there, caught hold of both the hands and threw her on the ground and

thereafter he committed rape against her. She has also deposed that during the sexual intercourse, he had given teeth bite on her lips and left cheek, due to which, there was swelling over those parts. She further deposed that when the appellant left her after about half an hour, he had threatened to her life in case of any alarm or noise raised by her. She further deposed that thereafter, she went to her mother and narrated the story. Due to such act, her clothes were stained with blood. Her such evidence is supported by the evidence of her mother Shakila (P.W.4) and father Amir Khan (P.W.2). The version of the prosecutrix is further supported by the F.I.R., promptly lodged by her on the same day in the concerned police station. Not only this, her version is also supported by the medical evidence of Dr.(Smt) Shail Khare (P.W.12) who had examined her on 01.9.1999 and has prepared a report Ex.P.17. According to her, the hymen of the girl was ruptured at two places and fresh bleeding was coming and the vagina was admitting one finger with pains and there was redness on the lip. Further the chemical examiner's report Ex.P-19 also supports the version of prosecution as the blood stains were found on the articles like Cheddi, Kurta, Salvar and pubic hair of the prosecutrix and on the underwear of the appellant and the semen and human spermatozoa were also found on the underwear of the prosecutrix and the appellant as also on the pubic hair and two slides prepared from the vaginal material of the prosecutrix.

(6) After going through the entire evidence led by the prosecution, including the medical evidence and the chemical examiner's report, I am of the opinion that the Sessions Court has not committed any error of law while holding the appellant guilty of offence punishable u/ss 376, 324 and 506 (Part-II) IPC. There is no force in the first argument advanced by learned counsel for the appellant, which relates to the testimonies of these prosecution witnesses, praying for setting aside the conviction and sentence. The judgment of conviction passed by the Court below cannot be faulted with and the same is hereby confirmed.

(7) So far as quantum of sentence is concerned, learned counsel for the appellant referred to the decision of the Apex Court rendered in the matter of ***State of Chhattisgarh –Vs- Derha (2004) 9 S.C.C. 699***. In the said case, rape was committed against a girl aged about 8 years and the accused was aged about 18 years on the date of incident and he had also served about 6½ years' imprisonment consequent to the sentence imposed on him and was having a family. In such circumstances, the Apex Court vide Para 8 of the judgment, while allowing the appeal of the State and setting aside the judgment of the High Court, reduced the sentence to 7 years R.I. The submission of learned counsel for the appellant was that the case of the appellant is on better footings, therefore, his sentences should also be reduced accordingly.

(8) The principle of proportion between crime and punishment is governed by the "*Doctrine of just desert*". The doctrine is the foundation of a criminal sentence which is ultimately awarded for a punishment to the wrong doer. What one really deserves should be the punishment for having committed a crime is the underlying principle. The punishment must not be disproportionately great is a corollary of "*just desert*" which is governed by the same principle which says that there cannot be a punishment without guilt and the basic element behind the principle is the proportion between crime and punishment. The lesser is the gravity of the crime, the smaller would be the punishment and the greater is the gravity of the crime, the higher would be the punishment, subject to the ancillary factors for determining the proportion of the same, though all further subject to the statutory obligations specifically provided by law in force.

(9) In the present case, the appellant was aged about 20 years on the date of incident and the girl was aged about 18-19 years. Both were known to each other. The appellant is continuously in jail since 03.9.1999 (the first date of his arrest) and thereby he has already undergone imprisonment for about more than 7 years and 9 months and in the facts and circumstances of this case, I deem it appropriate to reduce his sentence from 10 years to 8 years u/s 376 I.P.C.

(10) In the result the appeal is partly allowed. The conviction and sentence awarded to the appellant u/s 324 and 506(Part II)

(33)

IPC are hereby confirmed. Similarly, his conviction u/s 376 is also confirmed. However, the sentence awarded u/s 376 IPC is reduced to 8 years R.I. The appellant shall be entitled to set off and he shall also be entitled to any legal remission permissible in law for having already served the above sentence of imprisonment. The order of running the sentences concurrently is also confirmed.

Sd/-
Sunil Kumar Sinha
Judge

Rao